# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 2425 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GUJARAT STATE ROAD TRANSPORT CORP. - Petitioner(s)**

**Versus**

**M.A.MALEK,C/O STATE TRANSPORT KARMACHARI UNION - Respondent(s)**

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**Appearance :**

MR HARDIK C RAWAL for Petitioner(s) : 1,
Mr. S.P. Majmudar, for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 22/08/2005**

**ORAL JUDGMENT**

Though served, nobody appears on behalf of the respondent workman and therefore this Court has no other alternative but to decide and dispose of the case on merits ex parte.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner, Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Nadiad, dated 26th August 2004 in Reference (ITN) No. 95 of 2000 in partly allowing the said Reference and by substituting the order of punishment imposed by the disciplinary authority from putting the respondent-workman to the minimum of the pay-scale with effect from 9.5.1997 to withholding of one increment only.

3. The respondent workman was serving as a Conductor and his service tenure was only 3 years. His bus was checked by the Checking Squad on 8.9.1996 when the respondent workman was on duty and it was found that he had not issued tickets to 4 passengers though fare was collected and on seeing the checking squad he had tried to issue tickets to those 4 passengers and a departmental enquiry came to be initiated against him. After holding the charge and misconduct proved against him the disciplinary authority imposed the punishment of putting the respondent workman to the minimum of the pay-scale. Being aggrieved and dissatisfied with the same, the respondent workman raised industrial dispute challenging the order of punishment imposed by the disciplinary authority which was referred to the Industrial Tribunal being Reference (ITN) No. 95/2000. Inspite of the fact that the Industrial

Tribunal has specifically found and held that the respondent workman had collected the fare but did not issue the tickets to 4 passengers and on seeing the checking squad tried to issue tickets to those 4 passengers the Industrial Tribunal interfered with the order of punishment imposed by the disciplinary authority and set aside the order of punishment imposed by the disciplinary authority of putting the respondent workman to the minimum of the pay-scale and substituting the same by the order of withholding of only one increment exercising the powers under Section 11-A of the I.D. Act. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Nadiad, dated 26th August 2004 in Reference (ITN) No. 95/2000, the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Hardik Raval, learned advocate appearing for the petitioner has vehemently submitted that in view of the finding given by the Industrial Tribunal to the effect that the respondent workman had not issued the tickets to 4 passengers though fare for the same was collected and on seeing the checking squad the respondent workman tried to issue the tickets, the Labour Court is not justified in interfering with the order of punishment imposed by the disciplinary authority whereby the respondent workman was put to the minimum of the pay-scale only.

It is further submitted by him that the Labour Court has not considered that the respondent workman had worked for only 3 years and that even after the aforesaid misconduct there are 5 defaults whereby such misconducts are repeated which also related to non-issuance of tickets and therefore the Industrial Tribunal ought not to have interfered with the order of punishment imposed by the disciplinary authority and hence it is requested to allow the present Special Civil Application.

5. From the judgment and award, it seems that even the Industrial Tribunal has specifically found and held that the respondent workman eventhough collected fare from 4 passengers he had not issued the tickets, but on seeing the checking squad he had tried to issue the tickets to those 4 passengers, and if the checking squad would not have come the intention of the respondent workman was to misappropriate the said amount. Considering the aforesaid finding, there was no reason for the Industrial Tribunal to interfere with the order of punishment imposed by the disciplinary authority. As held by the Hon'ble Supreme Court as well as by this Court in catena of Judgments, non-issuance of tickets though fare is collected is a serious misconduct and for this misconduct order of dismissal is warranted. In the present case, when the workman has worked only for 3 years and the workman has audacity to indulge

into such type of misconducts, the Industrial Tribunal was not required to take any lenient view more particularly when it was pointed out to the Industrial Tribunal that after the aforesaid misconduct there are 5 misconducts of similar nature committed by the respondent workman. In the aforesaid facts and circumstances, exercise of powers by the Industrial Tribunal under Section 11-A of the I.D. Act and interference with the order of punishment imposed by the Industrial Tribunal is nothing but exceeding the jurisdiction and/or not exercising the powers judiciously. In fact, considering the facts and circumstances and the charge and the misconduct proved against the respondent workman, the order of dismissal was warranted, but the disciplinary authority itself has imposed the punishment of putting the respondent workman to the minimum of the pay-scale. In that circumstances, the Industrial Tribunal was not required to interfere with the order of punishment imposed by the disciplinary authority which was only putting the respondent workman to the minimum of the pay-scale when the respondent workman had worked for only 3 years. Under the circumstances, the judgment and award, passed by the Industrial Tribunal, cannot be sustained and the same is required to be quashed and set aside.

6. For the reasons stated above, the judgment and award, passed by the Industrial Tribunal, Nadiad, dated 26th August 2004 in Reference (ITN) No. 95/2000, is hereby quashed and set aside, and the order of punishment imposed by the disciplinary authority is restored. Rule is made absolute to the aforesaid extent, however, with no order as to costs.

*[ M.R. Shah, J. ]*

*RMR.*